Hovsepian v. Apple, Inc. Doc. 159

GOODWIN | PROCTER LLP
BENJAMIN HERSHKOWITZ
JOHN F. PETRSORIC
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 813-8800
Facsimile: (212) 355-3333
bhershkowitz@goodwinprocter.com
jpetrsoric@goodwinprocter.com

JOHN C. ENGLANDER
53 State Street
Boston, MA 02109
Telephone: (617) 570-1000
Facsimile: (617) 523-1231
jenglander@goodwinprocter.com

Attorneys for Defendant
CSC HOLDINGS, INC.

KAYE SCHOLER LLP
DAVID S. BENYACAR
DANIEL REISNER
425 Park Avenue
New York, NY 10022-3598
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
dbenyacar@kayescholer.com
dreisner@kayescholer.com

Attorneys for Defendant
TIME WARNER CABLE, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In Re

ACACIA MEDIA TECHNOLOGIES CORPORATION

Case No. C-05-01114 JW

ROUND 3 DEFENDANTS CLAIM CONSTRUCTION BRIEF (PART II) FOR TERMS 30 THROUGH 42 OF UNITED STATES PATENT NOS. 5,132,992 AND 5,253,275

Date:	June 2, 2006
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Courtroom:	8, 4th Floor
Judge:	Honorable James Ware

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599 Lexington Avenue
New York, NY 10022

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New York, NY 10022

Goodwin Procter LLP
599 Lexington Avenue
New York, NY 10022

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599 Lexington Avenue
New York, NY 10022

TABLE OF ABBREVIATIONS

'275 Patent	United States Patent No. 5,253,275
'992 Patent	United States Patent No. 5,132,992
Acacia Br.	D.I. 145, *Plaintiff Acacia Media Techs. Corp.'s Legal Memorandum re the Definitions of the Claim Terms from the '992 and '275 Patents*
Block Decl.	D.I. 146, *Declaration of Alan P. Block In Support of Plaintiff Acacia Media Technologies Legal Memorandum re the Definitions of the Claim Terms from the '992 and '275 Patents*
CSC	CSC Holdings, Inc. (d/b/a Cablevision)
D.I.	Docket Index
Ex.	Exhibits attached to the *Declaration of John F. Petrsoric In Support of Round 3 Defendants Second Brief on Claim Construction for Terms 30 Through 42 of United States Patent Nos. 5,132,992 and 5,253,275*
Joint Claim Chart	D.I. 147, *Joint Chart of the Parties' Proposed Definitions for Claim Terms From the '992 and '275 Patents*
Markman I	*Markman Order* dated July 12, 2004 from Civ. Act. No. 8:02-CV-1040-JW (MLGx) (C.D. Cal.)
Markman II	D.I. 119, *Further Claim Construction Order; Order Finding Claim Terms Indefinite and Invalid*
Round 3 Br. I	*Round 3 Defendants Claim Construction Brief (Part I) for Terms 1 Through 29 and 43 Through 49 of United States Patent Nos. 5,132,992 and 5,253,275*
Round 3 Defendants	CSC Holdings, Inc. and Time Warner Cable, Inc.
TWC	Time Warner Cable, Inc.

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New York, NY 10022

TABLE OF CLAIM ELEMENTS

Limitation	Description	Brief	Section
[1]	"distribution method responsive to requests from a user identifying items in a transmission system containing information"	I	Point I
[2]	"remote locations"	I	Point III
[3]	"storing, in the transmission system, information from items in a compressed data form, the information including an identification code and being placed into ordered data blocks"	I	Point II
[4]	"receiving system"	I	*
[5]	"items containing (or having) information"	I	Point I
[6]	"time requested by the user"	I	Point IV
[7]	"user"	I	Point XXVII
[8]	"to one of the receiving systems at one of the remote locations selected by the user" and "the receiving system at the selected remote location"; "the receiving system at one of the remote locations selected by the user"; and "the receiving system at the selected remote location"	I	Point III
[9]	"sending at least a portion of the file to one of the remote locations"	I	Point V
[10]	"sending at least a portion of the stored information from the transmission system"	I	Point VI
[11]	"wherein the information in the items includes analog and digital signals" and "ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks"	I	Point VII
[12]	The order of the steps of claim 20 of the '992 patent.	I	Point IX
[13]	The order of the steps of claim 21 of the '992 patent.	I	Point X
[14]	"the step of storing includes the step of storing the received information at the head end of a cable television reception system"	I	Point XI
[15]	The order of the steps of claim 23 of the '992 patent.	I	Point XII
[16]	"the step of storing includes the step of storing the received information in an intermediate storage device"	I	Point XIII

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Limitation	Description	Brief	Section
[17]	The order of the steps of claim 24 of the ‘992 patent.	I	Point XIV
[18]	“a method of transmitting information to remote locations, the transmission method comprising the steps, performed by a transmission system, of” and “comprises the steps, performed by a transmission system”	I	Point VIII
[19]	“sequence of addressable data blocks”	I	*
[20]	“compressing the formatted and sequenced data blocks”	I	Point XV
[21]	“sending at least a portion of the file to one of the remote locations”	I	Point XVI
[22]	The order of the steps of Claim 41 of the ‘992 patent.	I	Point XVII
[23]	The order of the steps of Claim 42 of the ‘992 patent.	I	Point XVIII
[24]	The order of the steps of Claim 43 of the ‘992 patent.	I	Point XIX
[25]	The order of the steps of Claim 44 of the ‘992 patent.	I	Point XX
[26]	“separately storing a plurality of files, each including compressed, sequenced data blocks”	I	Point XXI
[27]	The order of the steps of Claim 45 of the ‘992 patent.	I	Point XXII
[28]	“receiving transmission requests to transmit available items”	I	Point XXIII
[29]	The order of the steps of Claim 46 of the ‘992 patent.	I	Point XXIV
[30]	“storage means in the transmission system for storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks”	II	III.A
[31]	“requesting means in the transmission system, coupled to the storage means, for receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user”	II	III.B
[32]	“transmission means in the transmission system, coupled to the requesting means, for sending at least a portion of the stored information to the receiving system at the selected remote location”	II	III.C
[33]	“receiving means in the receiving system for receiving the transmitted information”	II	III.D

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599 Lexington Avenue
New York, NY 10022

Limitation	Description	Brief	Section
[34]	"memory means in the receiving system, coupled to the receiving means, for storing a complete copy the received information"	II	III.E
[35]	"playback means in the receiving system, coupled to the memory means, for playing back the stored copy of the received information at a time requested by the user"	II	III.F
[36]	"conversion means, for converting the analog signals of the information to digital components"	II	IV.A
[37]	"formatting means, coupled to the conversion means, for formatting the digital signals of the information"	II	IV.B
[38]	"ordering means, coupled to the formatting means, for ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks"	II	IV.C
[39]	"compression means, coupled to the ordering means, for compressing the ordered information"	II	IV.D
[40]	"means for receiving information at the head end of a cable television reception system"	II	V.A
[41]	"means for distributing compressed signals"	II	VI.A
[42]	"means for decompressing the received signals and for distributing the decompressed received signals and compressed received signals"	II	VII.A
[43]	"A distribution system as recited in claim 47, wherein the memory means is an intermediate storage device."	I	Point XIII
[44]	"reception system associated with a receiving system at one of the remote locations selected by the user"	I	*
[45]	"sending a request, by the user to the transmission system, for at least a part of the stored information to be transmitted to a reception system associated with a receiving system at one of the remote locations selected by the user"	I	Point XXV
[46]	"playing back the stored copy of the information from the reception system to the receiving system at the selected remote location at a time requested by the user"	I	Point XXVI
[47]	"sending at least a portion of the stored information from the transmission system to the reception system…"	I	Point V

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Limitation	Description	Brief	Section
[48]	"playing back the stored copy of the information sent over a cable communication path from the reception system to the receiving system at the selected location at a time requested by the user"	I	Point XXVI
[49]	The order of the steps of claims 2 and 5.	I	Point VI

* The Round 3 Defendants will address terms the Court previously construed (with respect to which the Round 3 Defendants have not yet had the opportunity to be heard) during the August 11, 2006 *Markman* hearing.

Goodwin Procter LLP
599 Lexington Avenue
New York, NY 10022

Goodwin Procter LLP
599 Lexington Avenue
New York, NY 10022

I. INTRODUCTION

Defendants CSC and TWC submit this memorandum in support of their proposed constructions for the claim terms in the '992 and '275 patents not previously considered by the Court in its Markman I and Markman II decisions. There are still 20 claims from the '992 and '275 patents pending by Acacia against each of the Round 3 Defendants. This brief addresses the means-plus-function limitations that appear in these claims – terms 30-42 in the Joint Claim Chart.[1] Another brief by the Round 3 Defendants addresses the remaining limitations.

At its heart, a patent grants the right to exclude. In exchange for that right, the patentee must disclose what the patentee views as the invention. *See JEM AG Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 142 (2001) ("the disclosure required by the Patent Act is 'the *quid pro quo* of the right to exclude"). The patentee must "know what he owns" and the public must "know what [it] does not" own. *Festo Corp. v. Shoketsu Kinzuku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 730-31 (2002). Over one hundred years ago the Supreme Court stated: "Nothing can be more just and fair, both to the patentee and to the public that the former should understand, and correctly describe, just what he has invented, and for what he claims as a patent." *Merrill v. Yeomans*, 94 U.S. 568, 573-574 (1876).

While Acacia correctly notes that the Round 3 Defendants do not always agree with the proposed constructions of the Rounds 1 and 2 Defendants, these differences highlight how difficult it is to understand the highly convoluted, vague and internally inconsistent statements found in the specification of the patents-in-suit. Acacia tries to capitalize on the vagueness and inconsistencies that permeate the patents-in-suit and to mold its constructions to suit its litigation-induced purposes. The vagueness and the wholesale failure to disclose critical elements to support claims only exacerbates the difficulty that the parties and the Court face in construing the claims. These difficulties are illustrated by this Court's invalidation of a number of terms for indefiniteness and the defendant's unanimous agreement that additional terms are indefinite.

[1] For the Court's convenience, this brief adopts Acacia's numbering scheme for the claim elements as set forth in the Joint Claim Chart.

II. MEANS PLUS FUNCTION LIMITATIONS

Any claim limitation that uses the term "means" is presumed to be a means-plus-function limitation to be construed pursuant to 35 U.S.C. § 112, ¶ 6. *Unidynamics Corp. v. Automatic Prods. Int'l, Ltd.*, 157 F.3d 1311, 1319 (Fed. Cir. 1998). This presumption may be rebutted in two ways: (i) by showing that the limitation does not recite a function, *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1347 (Fed. Cir. 1999); or (ii) if the limitation does recite a function, showing by a preponderance of the evidence that the limitation otherwise contains sufficient structure to perform the recited function. *Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1372 (Fed. Cir. 2003). Even if some structure is set forth in the claim language, such structure does not remove the limitation from § 112, ¶ 6 if it "merely serves to further specify the function of the means." *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1536 (Fed. Cir. 1991).

After determining that § 112, ¶ 6 applies to a given claim limitation, there are three additional steps required to complete construction. First, the Court needs to ascertain the recited function. *Asyst Techs., Inc. v. Empak, Inc.*, 268 F.3d 1364, 1369 (Fed. Cir. 2001). Second, if necessary, the recited function must be construed pursuant to the normal canons of claim construction. *See Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 249 F.3d 1314, 1324 (Fed. Cir. 2001)). Third, the specification must be reviewed to determine what structure corresponds to the performance of the recited function ("the corresponding structure"). "Structure" in the specification may only be considered "corresponding structure" if it is ***clearly linked*** in the patent's specification or prosecution history to performing the recited function. *B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997) (emphasis added). "This duty to link or associate structure to function is the *quid pro quo* for the convenience of employing § 112, ¶ 6." *Id.* (citations omitted). Inquiry into the corresponding structure is therefore necessarily limited to the four corners of the patent and its file history. It is improper to look to knowledge of one of ordinary skill in the art to identify structure that such a person would associate with the performance of the recited function when that structure is not clearly disclosed in the specification for performing that function. *See Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1212 (Fed. Cir. 2003).

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Finally, as this Court has recognized on previous occasions with respect to the '992 patent, there may still be a question as to whether "sufficient structure has in fact been disclosed [in the specification] to support a means-plus-function limitation." *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1379 (Fed. Cir. 1999); *see*, *e.g.*, Markman I at 18-21. Failure to disclose "sufficient structure" will render the claim limitation indefinite under 35 U.S.C. § 112, ¶ 2. *Atmel*, 198 F.3d at 1378-79; *see also Default Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1298 (Fed. Cir. 2005).

III. CLAIM 47

> 47. A distribution system including a transmission system and a plurality of receiving systems at remote locations, the transmission system being responsive to requests identifying items containing information to be sent from the transmission system to the receiving systems at the remote locations, the distribution system comprising:
>
> [30] **storage means** in the transmission system for storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks;
>
> [31] **requesting means** in the transmission system, coupled to the storage means, for receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user;
>
> [32] **transmission means** in the transmission system, coupled to the requesting means, for sending at least a portion of the stored information to the receiving system at the selected remote location;
>
> [33] **receiving means** in the receiving system for receiving the transmitted information;
>
> [34] **memory means** in the receiving system, coupled to the receiving means, for storing a complete copy the received information; and
>
> [35] **playback means** in the receiving system, coupled to the memory means, for playing back the stored copy of the received information at a time requested by the user.

A. *"Storage Means" (element [30]) ('992 Patent, Claim 47)*

The first limitation of claim 47 of the '992 patent is:

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storage means in the transmission system for storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks.[2]

This Court should construe this limitation pursuant to 35 U.S.C. § 112, ¶ 6 because it contains the term "means" and uses functional language. The "storage means" performs the recited function of "storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks" and is in the "transmission system." This limitation is indefinite pursuant to § 112, ¶ 2 because the specification of the '992 patent does not adequately set forth structure for the "compressed data formatter 117," which is necessary for performing the recited function.

1. Acacia Fails to Rebut the Presumption that "Storage Means" is a Means-Plus-Function Limitation

The "storage means" limitation uses the terms "means" and "for" and is therefore presumed to be a means-plus-function limitation to be construed pursuant to 35 U.S.C. § 112, ¶ 6. *See Unidynamics*, 157 F.3d at 1319. Acacia asserts that "storage means" is not a means-plus-function limitation because "storage" purportedly conveys sufficient structure for performing the recited function. (Acacia Br. at 69.) Acacia's arguments fail for several reasons.

Acacia never explains how, in a claim with six limitations that contain the term "means," applicants intended to invoke § 112, ¶ 6 to cover some of those limitations to the exclusion of others. Applicants clearly signaled their intent to invoke § 112, ¶ 6 by using the words "means" and "for."[3]

Despite Acacia's contrary assertions, "storage" does not convey sufficient structure to remove this limitation from § 112, ¶ 6. "Storage" is merely a descriptor used to distinguish the "means . . . for storing" from the five other "means" limitations that appear in the claim. *See*

[2] Every means-plus-function limitation in claim 47 and its dependents has at least two components: (1) a means-plus-function clause (*e.g.*, "a storage means . . . for storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks") and (2) a location clause (*e.g.*, "in the transmission system") that identifies where the structure corresponding to the recited function appears in the claimed system.

[3] Other courts have found "storage means" limitations to be subject to construction in accordance with § 112, ¶ 6. *See, e.g., Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, No. 96-1718-C, 2000 U.S. Dist. LEXIS 17352 at *37-39 (S.D.Ind. Nov. 29, 2000) (attached hereto as Exhibit 1).

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New York, NY 10022

Laitram, 939 F.2d at 1536 (language that merely serves to further specify the function of the "means" cannot be used to remove the limitation from § 112, ¶ 6). The language of the claim fails to provide sufficient structure to rebut the presumption that this limitation should be construed pursuant to § 112, ¶ 6. And, as this Court has recognized with respect to "library means," even if the term "storage" is "considered a structural term, the remainder of the clause invokes means-plus-function treatment, and the use of a structural term in the clause does not vitiate the patentees' intent." (Markman I at 10, ll. 3-5.)

Acacia's brief similarly fails to provide sufficient evidence to rebut the presumption that § 112, ¶ 6 applies. Acacia relies on a single footnote that cites a technical dictionary from 1996 (the "*1996 IEEE Dictionary*"). (Acacia Br. at 69.) This citation does not rebut the presumption that applicants intended to invoke § 112, ¶ 6. Acacia cannot even begin to explain how its selected dictionary definition of "any medium in which data can be retained" can serve as structure which performs the claimed function (*e.g.*, ensuring that the data is or has been properly processed and compressed). Furthermore, unlike the case relied upon by Acacia, *TI Group Auto Sys. (N. Am.), Inc. v. VDO N. Am., L.L.C.*, the claim here does not recite any structure for "storage means," only its functional requirements. *See* 375 F.3d 1126, 1135 (Fed. Cir. 2004) (presumption rebutted because claim further defines structure of "pumping means" as including "a nozzle and a venture tube in alignment with the nozzle").[4]

---

[4] Further, even if the *1996 IEEE Dictionary* were probative, it raises as many questions as it answers. Acacia's reliance on the *1996 IEEE Dictionary* is misplaced as it does not describe the art as of the *1991* filing date. *See PC Connector Solutions LLC v. Smartdisk Corp.*, 459 F.3d 1359, 1363 (Fed. Cir. 2005) (a "claim['s] meaning must be interpreted as of its effective filing date") (citing *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 986 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996)). The *1996 IEEE Dictionary* provides numerous definitions for "storage," including multiple functional definitions:

> **storage (1) (A) (electronic computation)** The *act of* storing information . . . **(3) (A)** The *retention* of data in a storage device. **(B)** The *action of* placing data into a storage device.

(Ex. B, Excerpts from *1996 IEEE Dictionary* at 1049 (emphasis added).) Acacia conveniently ignores the functional definitions and in fact even failed to reproduce the page containing the definition for "storage" in its Exhibit 4. (*See* Block Decl., Ex. 4 at 2.)

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Accordingly, Acacia has failed to rebut the presumption that "storage means" should be construed according to § 112, ¶ 6.

2. The Recited Function

The construction of a means-plus-function limitation begins with the identification of the recited function. (*See, supra*, Section II.) The "storage means" performs the function of "storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks." In accordance with the arguments set forth in Point II of Round 3 Br. I, this Court should construe the recited function to require all of the following:

> 1) obtaining information, including an (one) identification code, from the plurality of (two or more) physical items which identifies all of the information retrieved from the plurality of items;
>
> 2) placing the information that is obtained from the plurality of physical items into a single set of ordered data blocks;
>
> 3) compressing the information which is in the single set of ordered data blocks; and
>
> 4) storing the compressed information "in the transmission system."

3. The "Storage Means" is Located in the Transmission System

The plain meaning of the location clause in this limitation specifies that "storage means" is "in the transmission system." In other words, the transmission system must contain the structure that corresponds to the function of "storing information from the items in a compressed data form, in which the information includes an identification code and is placed into ordered data blocks."

4. The Lack of Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure must be identified. (*See, supra*, Section II.) As discussed above, the transmission system must contain the structure corresponding to the recited function. Accordingly, the proper identification of the corresponding structure requires finding structure in the transmission system that the specification of the '992 patent clearly links to performing the recited function. *See B. Braun*, 124 F.3d at 142.

The only structure identified by Acacia as performing the recited function is "compressed data library 118."[5] (Acacia Br. at 70.) Although this structure performs part of the recited function (*i.e.,* storing), and appears to be linked to the recited function, it cannot and does not perform all of the recited function. Acacia's citations to the specification of the '992 patent show that the "compressed data library 118" only stores information *after* the conversion of the information into a format compatible with "compressed data library 118." (*See* Acacia Br. at 70-71 (quoting '992 patent at 10:17-45) ("[a]fter compression processing by compressor 116, the compressed audio and is preferably *formatted* . . . .") (emphasis added).) The recited function requires more. (*See*, *supra*, Section III.A.2.) The "compressed data library 118" stores only "compressed" data. The structure corresponding to "storage means" must, however, be capable of making certain that the data has an identification code, is placed into ordered data blocks and is compressed.

The only data processing that the patent discloses is associated with the compressed data library 118, which performs storing, occurs in the "compressed data formatter 117." However, the specification shows "compressed data formatter 117" does not perform the function of compressing the data (much less making certain the data has an identification code and is placed into ordered data blocks); instead, any compression is performed by "data compressor 116":

> Once precompression processing is finished, the frames are *compressed by the data compressor 116* . . . . After compression processing by compressor 116, the compressed audio and video data is preferably formatted and placed into a single file by the compressed data storage means 117. The file may contain the compressed audio and/or video data, time markers, and the program notes. The file is addressable through the unique identification code assigned to the data by the identification encoder 112.

(Ex. A, '992 patent, 9:41-42, 10:23-30 (emphasis added).) The specification of the '992 patent shows that that "compressed data formatter 117" merely performs the function of converting the compressed information into a format compatible with "compressed data library 118":

---

[5] Furthermore, Acacia consistently fails to identify the link between the recited function and the structure that Acacia identifies. Rather than demonstrate the link between the recited function and the disclosed structures, Acacia quotes large blocks from the specification without explaining how the structure(s) correspond to the recited function, or what part of the recited function the structure(s) perform.

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> In some cases, such as in inter-library transfers, incoming materials may be in a previously compressed form so that there is no need to perform compression by precompression processor 115 and compressors 128 and 129. In such a case, retrieved items are passed directly from identification encoder 112 to the compressed data formatter 117. The item database records, such as the program notes which may also be input from another system, *to the compressed data formatting section 117, where this data, if necessary, is reformatted to make it compatible with the material stored in compressed data library 118*. Such material may be received in the form of digital tapes or via existing communication channels and may preferably input directly to a short term storage 117' in the compressed data formatting section 117.

(Ex. A, '992 patent, 7:44-58 (emphasis added).) Acacia points to nothing else in the specification linked with the claimed "storage means" that performs all of the necessary function.

Additionally, in construing "compressed data storing means" of claim 1 of the '992 patent, which contains overlapping functionality required by "storage means" of claim 47, this Court required more structure than Acacia identifies.[6] (Markman I at 23.) With respect to that limitation, this Court found that the structure that corresponded to the recited function included both the "compressed data formatter 117" and the "compressed data library 118." (*Id.*)[7] However, even if the "compressed data formatter 117" is linked to the recited function (which it is not), as discussed above, even these two structures together are not sufficient to perform all of the recited function.

Furthermore, the "compressed data formatter 117," is indefinite pursuant to § 112, ¶ 2 because the specification of the '992 patent fails to disclose sufficient structure for "compressed data formatter 117" to perform even its portion of the recited function. Indeed, the specification of the '992 patent treats the "compressed data formatter 117" as a "black box," wholly failing to disclose any information which can be used to adequately define the corresponding structure.

---

[6] The limitation from claim 1 reads, in relevant part, "compressed data storing means for storing [] the compressed, sequenced data blocks . . . ." (Ex. A, '992 patent, 20:32-37.)

[7] Indeed the specification even, at times, refers to "compressed data formatter 117" as "compressed data *storage means* 117." ('992 patent, 10:23-26.) However, at other times the specification states that "storage means" is broader than just "compressed data formatter 117" and that "[t]he compressed data storage means preferably *includes* compressed data library 118…" (*Id.*, 10:34-36 (emphasis added).) Acacia never explains why, in setting forth the functional limitations for "storage means" in claim 47, it did so in a manner inconsistent with how it had defined "storage means" in the specification. This inconsistency is further exacerbated by claim 48 which purportedly further defines the "storage means" limitation of claim 47.

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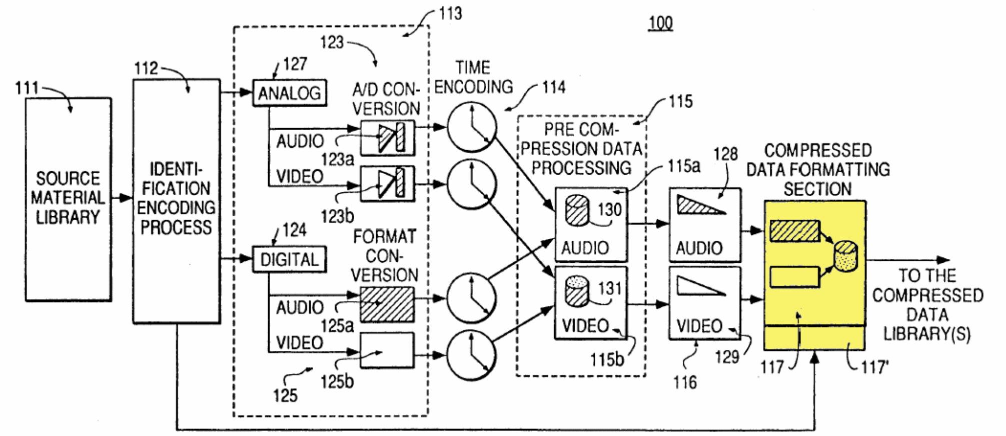
100
SOURCE MATERIAL LIBRARY
IDENTI-FICATION ENCODING PROCESS
ANALOG
AUDIO
VIDEO
DIGITAL
AUDIO
VIDEO
A/D CON-VERSION
FORMAT CON-VERSION
TIME ENCODING
PRE COM-PRESSION DATA PROCESSING
AUDIO
VIDEO
AUDIO
VIDEO
COMPRESSED DATA FORMATTING SECTION
TO THE COMPRESSED DATA LIBRARY(S)
111
112
113
114
115
115a
115b
116
117
117'
123
123a
123b
124
125
125a
125b
127
128
129
130
131

FIG. 2a

Furthermore, "data formatter" did not have any ordinary and customary meaning to one skilled in the art at the time of the invention. It is therefore not surprising that the *1996 IEEE Dictionary*, unpersuasively relied upon by Acacia in an effort to bolster its proposed construction for this limitation, does not provide any definition for "data formatter" much less how a "compressed data formatter" works. (*See* Ex. B, Excerpts from *1996 IEEE Dictionary* at 250-256.)

For the separate and independent reasons discussed above, the failure of the '992 patent specification to disclose sufficient structure corresponding to the recited function renders the "storage means" limitation of claim 47 indefinite pursuant to 35 U.S.C. § 112, ¶ 2.

B. ***"Requesting Means" (element [31]) ('992 Patent, Claim 47***)

The next limitation of claim 47 of the '992 patent is:

> requesting means in the transmission system, coupled to the storage means, for receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation requires: (i) the "requesting means" performs the recited function of "receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user" and (ii) it is in the

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"transmission system." The "requesting means" limitation is indefinite pursuant to § 112, ¶ 2 for at least the following reasons:

- the '992 patent fails to link the "library access interface 121," which is the only structure identified by Acacia purporting to perform the recited function in the "transmission system";
- the '992 patent fails to disclose adequate structure for the "library access interface 121" identified by Acacia; and
- nothing else in the '992 patent supplies adequate structure for performing the recited function.

1. The Recited Function

The construction of a means-plus-function limitation begins with the identification of the recited function. (*See, supra*, Section II.) The "requesting means" performs the function of "receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user." In accordance with the arguments set forth in Point III of Round 3 Br. I, the recited function should be construed to mean the following:

> Receiving requests from the user. When the user requests the selected "part of the stored information" and selects the premises to which it will be sent, the user must select from a plurality (two or more) of choices of premises different from the premises where the request is made. Each of the plurality of premises available for the user to choose from must have a receiving system to which the information can be transmitted;
>
> The request by the user to the transmission system "for at least a part of the stored information" must include an identification of the specific remote location selected by the user.

As is clear from the explicit language of the function as well as the proposed construction of the function, the request, received at the transmission system, must include an identification of the information that is being requested and an identification of the selected destination.

2. The "Requesting Means" is Located in the Transmission System

The plain meaning of the "location" clause of this limitation specifies that "requesting means" is "in the transmission system." In other words, the transmission system must contain the structure that corresponds to the function of "receiving requests from a user for at least a part of the stored information to be transmitted to the receiving system at one of the remote locations selected by the user." This is supported by the remaining intrinsic evidence. (Round 3 Br. I at Point III.)

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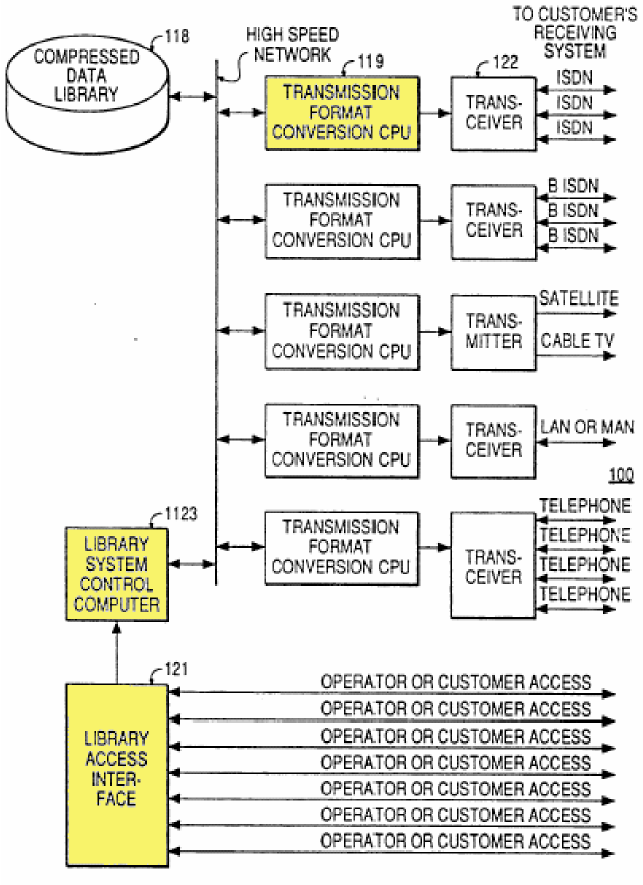
3. **The Lack of Corresponding Structure**

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See, supra*, Section II.) To properly identify the corresponding structure, we must look to the specification of the '992 patent to find the structure that the claim unequivocally provides is in the "transmission system," and is clearly linked to performing the recited function. The specification provides for three possible structures that purport to perform functions associated with user requests. The possible structures, as discussed below, are the "library access interface 121," the "transmission format means 119" and the "library system control computer 1123."


TO CUSTOMER'S RECEIVING SYSTEM
COMPRESSED DATA LIBRARY
118
HIGH SPEED NETWORK
119
TRANSMISSION FORMAT CONVERSION CPU
122
TRANS-CEIVER
ISDN
ISDN
ISDN
TRANSMISSION FORMAT CONVERSION CPU
TRANS-CEIVER
B ISDN
B ISDN
B ISDN
TRANSMISSION FORMAT CONVERSION CPU
TRANS-MITTER
SATELLITE
CABLE TV
TRANSMISSION FORMAT CONVERSION CPU
TRANS-CEIVER
LAN OR MAN
100
1123
LIBRARY SYSTEM CONTROL COMPUTER
TRANSMISSION FORMAT CONVERSION CPU
TRANS-CEIVER
TELEPHONE
TELEPHONE
TELEPHONE
TELEPHONE
121
LIBRARY ACCESS INTER-FACE
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
FIG. 2b

The "library access interface 121" is the only structure identified by Acacia. (Acacia Br. at 73 ll. 16-18.) Acacia points to specification citations discussing that the "library access interface 121" receives requests from the user. (Ex. A, '992 patent, 13:37-40 ("The library access interface

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121 receives transmission requests either directly from the users or indirectly by remote order processing and item database 300").) However, the specification does not identify the "library access interface 121" as being in the "transmission system." While element 121 is shown in Figure 2b, which shows part of the "transmission system," the specification teaches that the "library access interface 121 *[is] in* the reception system." (Ex. A, '992 patent, 17:44-45 (emphasis added).) Thus, it is not clearly linked with the "requesting means" and therefore cannot serve as structure for the "requesting means."

Arguendo, even if the "library access interface" were considered to be part of the "transmission system," the specification of the '992 patent does not recite a sufficiently definite structural description of the "library access interface 121." The specification treats the "library access interface 121" as a "black box" and does nothing more than recite desired functionality for it, disclosing no further information which can be used to adequately define the structure. The functions attributed to the "library access interface 121" are that:

> The ***library access interface 121 receives transmission requests*** either directly from the users or indirectly by remote order processing and item database 300. The transmission format means 119 receives the request and retrieves the composite formatted data block of the requested item stored in compressed data library 118 and converts the compressed formatted data block into a format suitable for transmission. ***The requested item is then sent to the user*** via the transmitter 122 or ***directly via interface 121***.

(Ex. A, '992 patent, 13:37-47 (emphasis added).) Thus, the "library access interface 121" not only receives requests, but also somehow transmits requested information to the user. No description is disclosed on how the "library access interface 121" performs these functions beyond the block (labeled "121") in Figure 2b.

Furthermore, the term "library access interface 121" by itself does not have an ordinary meaning to one of ordinary skill in the art in 1991 and Acacia points to none. Again, the *1996 IEEE Dictionary* relied on by Acacia reveals nothing to one of ordinary skill in the art that would allow such a person to determine or infer that the "library access interface 121" represents any sufficient or adequate structure. (*See* Ex. B, Excerpts from *1996 IEEE Dictionary* at 579.) Thus, while Acacia asserts that "library access interface" is the required structure, it is indefinite.

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Turning next to the "transmission format means 119," the specification describes the "transmission format means 119" as something that performs some tasks associated with user requests.

> The library access interface 121 receives transmission requests either directly from the users or indirectly by remote order processing and item database 300. *The transmission format means 119 receives the request and retrieves the composite formatted data block of the requested item stored in compressed data library 118 and converts the compressed formatted data block into a format suitable for transmission*. The requested item is then sent to the user via the transmitter 122 or directly via interface 121.

(Ex. A, '992 patent, 13:37-47 (emphasis added); Acacia Br. at 73, ll. 19-24.) The "transmission format means 119" is further described as "transmission format conversion ***CPU*** 119" in Figure 2b of the '992 patent. (Ex. A, '992 patent, Fig. 2b (emphasis added).) "In a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm." *WMS Gaming Inc. v. Int'l Game Technology*, 184 F.3d 1339, 1349 (Fed. Cir. 1999) (citations omitted). Therefore, the identification of the "transmission format conversion CPU 119" alone is insufficient. *Id.*

The specification of the '992 patent identifies various functionality that is to be performed by the "transmission format conversion CPU 119":

- Receiving requests (Ex. A, '992 patent, 13:40-41);
- Retrieving the "composite formatted data block of the requested item stored in compressed data library 118" (Ex. A, '992 patent, 13:42-43); and
- Converting (*i.e.*, encoding) the retrieved data blocks into a format suitable for transmission (Ex. A, '992 patent, 13:44-45, 15:55-60).

The '992 patent fails to disclose any algorithm for performing this laundry list of functionality and, therefore, fails to disclose adequate structure for the "transmission format conversion CPU 119." *See Gobeli Research, Ltd. v. Apple Computer, Inc.*, 384 F. Supp. 2d 1016, 1022-23 (E.D. Tex. 2005); *see also Toshiba Corp. v. Lexar Media, Inc.*, No. C 03-0167, 2005 U.S. Dist. LEXIS 5213 at *40 (N.D. Cal. Jan. 24, 2005) (attached hereto as Exhibit 2) ("A generic CPU is too broad to be the corresponding structure ... [t]o identify only the CPU as corresponding structure would improperly broaden the means-plus-function claim"). Additionally, the specification does not explain how or why "transmission format conversion CPU 119" should be linked to the recited function of the "requesting means" (*i.e.,* "receiving user request …") especially when the arrow between the "transmission format conversion CPU 119" and "transceiver 122" points *to* the transceiver (and hence toward the user) not from it. (Ex. A, '992 patent, Fig. 2b.)

Turning now to the "library system control computer 1123," which is shown in Figure 2b and described in the specification as performing functions associated with user requests:

> The user then selects the item or items that he or she desires. Upon selection and confirmation, by the user, *a request for transmission of a particular item or items is sent to the distribution manager program of the system control computer 1123.* The request contains the address of the user, the address of the item, and optionally includes specific frame numbers, and a desired viewing time of the item.

(Ex. A, '992 patent, 12:20-27 (emphasis added); *see also* Ex. A, '992 patent, 15:23-46.) This portion of the specification is ignored by Acacia. Because the "library system control computer 1123" recites a generic "computer," the identification is not complete. *WMS Gaming*, 184 F.3d at 1349. Here, the "library system control computer 1123" employs a special purpose "queue manager program" to carry out its prescribed functionality:

> All transmission requests from the access methods are placed into a transmission queue managed by the library system control computer 1123. *This queue is managed by a program* that controls the distribution of the requested items to the reception system 200 of the user. The queue manager program also operates in the system control computer and keeps track of the user ID, the chosen program and price, the user channel type, the number of requests for a given program, the latest delivery time, and the compressed data library media type (for example, high speed or low speed). From this information, the queue manager program makes best use of the available distribution channels and media for efficient transmission and storage of the requested items.

(Ex. A, '992 patent, 15:33-46 (emphasis added).)

In addition to receiving user requests, the specification identifies significant amounts of functionality to be performed by the "queue manager program" running on the "library system control computer 1123":

- Managing user information (Ex. A, '992 patent, 15:39-40);

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- Managing and optimizing transmission processes for multiple requests for a single item (Ex. A, '992 patent, 15:40-41, 47-54);
- Controlling access to files stored in the various media of the "compressed data library" (Ex. A, '992 patent, 15:42-43); and
- Managing utilization of the various transmission channels (Ex. A, '992 patent, 15:43-46, 16:21-25).

Figure 5 of the '992 patent is "a flowchart of a preferred method of implementing a queue manager program" and, at the very least, must be considered part of the corresponding structure of the "library system control computer 1123." (Ex. A, '992 patent, 16:29-30.) However, Figure 5 barely begins to address the extensive list of functionality required of the "library system control computer 1123." It does not address the management of user information (Ex. A, '992 patent, 15:39-40), the management and optimization of transmission processes for multiple requests for a single item (Ex. A, '992 patent, 15:40-41, 47-54) or the management of the various transmission channels (Ex. A, '992 patent, 15:43-46, 16:21-25). As a result, the combination of Figure 5 with the "library system control computer 1123" does not make for adequate structure for performing the requisite functionality of the "library system control computer 1123." *See Gobeli Research,* 384 F. Supp. 2d at 1022-23.

Thus, the specification states that requests are sent to the "library system control computer 1123," the "library access interface 121" and the "transmission format means 119." However, the specification makes no effort to reconcile these inconsistent disclosures. Accordingly, there is no basis for linking any structure in the patent with the claimed "requesting means." (Ex. A, '992 patent, 17:44-45.)

For the reasons discussed above, the '992 patent fails to provide any basis to link the "requesting means" to a structure in the patent and further fails to even disclose adequate structure for the three components of the transmission system that purport to process user requests – the "library access interface 121," the "transmission format conversion CPU 119" and the "library system control computer 1123." The "requesting means" limitation is therefore indefinite. *See Atmel*, 198 F.3d at 1378-79.

C. *"Transmission Means" (element [32]) ('992 Patent, Claim 47)*

The next limitation of claim 47 of the '992 patent is:

> transmission means in the transmission system, coupled to the requesting means, for sending at least a portion of the stored information to the receiving system at the selected remote location

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation requires: (i) the "transmission means" performs the recited function of "sending at least a portion of the stored information to the receiving system at the selected remote location" and (ii) it is in the "transmission system." The "transmission means" limitation is indefinite pursuant to § 112, ¶ 2 because the '992 patent fails to disclose adequate structure for the "transmission format conversion CPU 119," which is a necessary structure clearly linked to the recited function.

1. **The Recited Function**

The construction of a means-plus-function limitation begins with the identification of the recited function. (*See, supra*, Section II.) The "transmission means" performs the function of "sending at least a portion of the stored information to the receiving system at the selected remote location." In accordance with the arguments set forth in Point V of Round 3 Br. I, the recited function should be construed to mean the following:

> In response to the user request, at least a portion of the stored information must be retrieved from the storage means in the transmission system on which "information from items in compressed data form" was stored. The retrieved information is sent to the "selected remote location," *i.e.*, the location selected from a plurality (two or more) of choices of premises different from the premises where the request is made.

2. **The Lack of Corresponding Structure**

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See*, *supra*, Section II.) To properly identify the corresponding structure, we must look to the specification to find the structure that the claim unequivocally provides (i) is in the "transmission system" and (ii) is clearly linked to performing the recited function, *i.e.*, "sending at least a portion …."

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The structure relied upon by Acacia that purportedly performs the recited function in the "transmission system" is the "transmitter 122" (also called "transceiver 122"). The specification states:

> The transmission system 100 of the present invention preferably further includes ***transmitter means 122***, coupled to the compressed data library 118, ***for sending at least a portion of a specific file to at least one remote location***.
>
> * * *
>
> ***The transmitter 122 places the formatted data onto the communications channel. This is an electrical conversion section and the output depends upon the chosen communication path.*** The signal is sent to the reception system 200 in either a two way or a one way communication process. *In a standard telephone connection, the transmitter 122 is preferably a modem. When using an ISDN channel, the transmitter 122 is preferably a data coupler*.

(Ex. A, '992 patent, 15:61-65; 16:53-61 (emphasis added); *see also* Ex. A, '992 patent, Fig. 2b.)[8] Acacia attempts to broaden the "structural equivalents" for this limitation by identifying a medley of additional structure beyond "transmitter/transceiver," "modem" and "data coupler." (Acacia Br. at 75, ll. 4-7.) These supposed structures are not linked to performing the function of "sending at least a portion …" in the "transmission system." *See B. Braun* at 1424. For example, Acacia lists a "broadcast television transmitter." (Acacia Br. at 75, l. 6.) However, the cited part of the specification, and accompanying figure, shows how information is broadcast over the airwaves ***from the "reception system,"*** *not* the "transmission system." (Ex. A, '992 patent, Fig. 1g, 4:52-57.)

The "transmitter/transceiver 122" is not the only structure necessary for performing the function of the "transmission means" which is clearly linked to that function. During the prosecution of the '992 patent, when referring to the operation of the "transmitter means" of claim 1, the applicants stated that the "[t]ransmitter means, for example transmission format means 119 and transmitter 122, transmit the requested program to the user." (Ex. C, '992 Prosecution History, 6/17/91 Petition to Make Special at 4.) The applicants clearly linked the "transmission format means 119" (also described as "transmission format conversion CPU 119") and the "transmitter 122" to the

[8] As recited above, the specification identifies the well-known structures to ones of ordinary skill in the art – "modem" and "data coupler" – in explaining the "transmitter/transceiver 122." Contrast this with the complete absence of disclosure for "requesting means." (*See, supra*, Section III.B.2.)

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transmitting function of the "transmitter means." The corresponding structure must include both the "transmitter/transceiver 122" and the "transmission format conversion CPU 119." However, as discussed, *supra*, in Section III.B.2, the '992 patent fails to disclose adequate structure for the "transmission format conversion CPU 119." The "transmission means" limitation is therefore indefinite. *See Atmel*, 198 F.3d at 1378-79.

D. "*Receiving Means" (element [33]) ('992 Patent, Claim 47)*

The next limitation of claim 47 of the '992 patent is:

receiving means in the receiving systems for receiving the transmitted information.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. The "receiving means" limitation has two parts: (i) it performs the recited function of "receiving the transmitted information" and (ii) it is in the "receiving system." The corresponding structure for the "receiving means" limitation is "transceiver 201" and "receiver format converter 202."

1. The Recited Function

The construction of a means-plus-function limitation begins with the identification of the recited function. (*See, supra*, Section II.) The "receiving means" performs the function of "receiving the transmitted information." Acacia asserts that the recited function carries its ordinary meaning and that no further construction is required.

2. The Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See, supra*, Section II.) To properly identify the corresponding structure, we must look to the specification to find the structure that the claim unequivocally provides is in the "receiving system" and is clearly linked to performing the recited function, *i.e.*, "receiving the transmitted information." The first structure identified in the specification of the '992 patent is the "transceiver 201." (*See* Ex. A, '992 patent, 18:3-6 ("The reception system 200 includes *transceiver 201 which receives the audio and/or video information transmitted by transmitter 122* of the

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transmission system 100.") (emphasis added).) The analysis does not end there however. The '992 patent also describes the "receiver format converter 202":

> The transceiver 201 is preferably connected to receiver format converter 202. The receiver format converter 202 converts the compressed formatted data blocks into a format suitable for playback by the user in real time.

(Ex. A, '992 patent, 18:9-13.)

During the prosecution of the '992 patent, when referring to the operation of the "transmitter means" of claim 1, the applicants stated that the "[t]ransmitter means, for example transmission format means 119 and transmitter 122, transmit the requested program to the user." (Ex. C, '992 Prosecution History, 6/17/91 Petition to Make Special at 4.) The applicants clearly linked the "transmission format means 119" (also described as the "transmission format conversion CPU") and the "transmitter 122" to the transmitting function of the "transmitter means." The natural corollary to this set of structures is that the receiving side structure includes not only "transceiver 201," but also "receiver format converter 202." Both structures need to be included as part of the corresponding structure for the "receiving means" limitation.

E. *"Memory Means" (element [34]) ('992 Patent, Claim 47)*

The next limitation of claim 47 of the '992 patent is:

> memory means in the receiving system, coupled to the receiving means, for storing a complete copy the [sic] received information

The "memory means" limitation of claim 47 is written in means-plus-function form. The limitation is therefore presumed to be governed by 35 U.S.C. § 112, ¶ 6. Contrary to Acacia's arguments, the limitation does not recite sufficient structure to overcome the presumption that it must be construed accordingly. This limitation requires that: (i) the "memory means" performs the recited function of "storing a complete copy the [sic] received information" and (ii) it is in the "receiving system." The corresponding structure for the "memory means" is "storage 203" and "storage 200c."

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1. Acacia Fails to Rebut the Presumption that "Memory Means" Is a Means-Plus-Function Limitation

The "memory means" limitation uses the terms "means" and "for" and is presumed to be a means-plus-function limitation to be construed pursuant to 35 U.S.C. § 112, ¶ 6. *See Unidynamics*, 157 F.3d at 1319. Acacia claims that "memory means" is not a means-plus-function limitation because it purportedly contains sufficient structure for performing the recited function and, therefore, the presumption is overcome. (Acacia Br. at 78.) Acacia's arguments fail for several reasons.

As with the "storage means" limitation, (*see*, *supra*, Section III.A.1), Acacia never explains how in a claim with six limitations written in means-plus-function form, the applicants intended some to be covered by § 112, ¶ 6 to the exclusion of others. Contrary to Acacia's litigation-induced parsing of these limitations, the applicants clearly signaled their intent to invoke § 112, ¶ 6 by using the words "means" and "for."[9]

Despite Acacia's assertions to the contrary, "memory" does not convey sufficient structure to remove this limitation from § 112, ¶ 6. Instead, "memory" is merely a descriptor used to distinguish the "means . . . for storing" from the five other "means" limitations that appear in the claim. *See Laitram*, 939 F.2d at 1536 (language that merely serves to further specify the function of the "means" cannot be used to remove the limitation from § 112, ¶ 6). The language of the claim fails to provide sufficient structure to rebut the presumption that this limitation should be construed pursuant to § 112, ¶ 6. And, as this Court has recognized with respect to "library means," even if the term "memory" is "considered a structural term, the remainder of the clause invokes means-plus-function treatment, and the use of a structural term in the clause does not vitiate the patentees' intent." (Markman I at 10, ll. 3-5.)

Acacia apparently agrees. The only "support" that Acacia proffers to rebut the presumption that § 112, ¶ 6 applies to "memory means" is one entry for "memory" from the 1993 version of

[9] Indeed, other courts have found "memory means" limitations to be subject to construction in accordance with § 112, ¶ 6. *See British Telecomm. Plc v. Prodigy Commc'ns Corp.*, 189 F.Supp.2d 101, 126-129 (S.D.N.Y. 2002).

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Webster's Third New International Dictionary.[10, 11] This is not persuasive. As explained, *supra*, with respect to "storage means," a dictionary citation dated after the filing date of the patent is not probative. *See PC Connector*, 459 F.3d at 1363. Furthermore, the Federal Circuit has "previously cautioned against the use of non-scientific dictionaries, 'lest dictionary definitions be converted into technical terms of art having legal, not linguistic significance.'" *Dow Chem. Co. v. Sumitomo Chem. Co., Ltd.*, 257 F.3d 1364, 1373 (Fed. Cir. 2001) (citing *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998)).

Accordingly, Acacia has failed to rebut the presumption that "memory means" should be construed pursuant to 35 U.S.C. § 112, ¶ 6.

2. The Recited Function

Because "memory means" is a means-plus-function limitation, its construction begins with the identification of the recited function. (*See, supra*, Section II.) The "memory means" performs the function of "storing a complete copy the [sic] received information." Acacia asserts that the recited function should be construed as "storing a complete copy of the received information."[12] (Acacia Br. at 78, ll. 20-21.)

3. The Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See supra*, Section II.) To properly identify the corresponding structure, we must look to the specification to find the structure that the claim unequivocally provides (i) is in the

---

[10] There are numerous definitions provided for "memory" in *1993 Webster's Dictionary*. Acacia selectively cites to only one of the many definitions of "memory" that appear. (Acacia Br. at 78, n.11.) Not surprisingly, that dictionary includes numerous *functional* definitions for "memory": "to remember," "the content of something remembered" and "a capacity for returning to a former condition." (Acacia Br., Block Decl., Ex. 5 at p. 15.) These were conveniently ignored by Acacia.

[11] One can only speculate why Acacia cited to the *1996 IEEE Dictionary* for "storage," but the *1993 Webster's Dictionary* for "memory" when the *1996 IEEE Dictionary* contains definitions for "memory." (*See* Ex. 2, Excerpts from *1996 IEEE Dictionary* at 645.) The Federal Circuit has previously cautioned against "dictionary shopping." *See generally, Phillips*, 415 F.3d at 1320-23.

[12] The parties have stipulated that "storing a complete copy" of claim 19 of the '992 patent and claims 2 and 5 of the '275 patent means "storing a copy such that all of the received information is in storage at the same time." (D.I. 148, *Parties' Stipulated Definitions for Claim Terms from the '992 and '275 Patents*.)

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"receiving system" and (ii) is clearly linked to performing the recited function, *i.e.*, "storing a complete copy the [sic] received information."

Acacia identifies "storage 203" as the corresponding structure. (Acacia Br. at 78-79.) However, "storage 200c" is in the "receiving system" and is also linked to performing the recited function of "storing a complete copy …":

> In non-direct connection reception systems such as shown in reception system 200' of FIG. 1f, *intermediate storage device 200c* may preferably include, for example, sixteen hours of random access internal audio and video storage. A reception system with such storage *is capable of storing several requested items for future playback.*

(Ex. A, '992 patent, 5:21-28 (emphasis added).)

Thus, the complete corresponding structure for the "memory means" limitation is "storage 203" and "storage 200c."

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F. *"Playback Means" (element [35]) ('992 Patent, Claim 47)*

The next limitation of claim 47 of the '992 patent is:

> playback means in the receiving system, coupled to the memory means, for playing back the stored copy of the received information at a time requested by the user.

This Court should construe this limitation pursuant to § 112, ¶ 6 because it contains the term "means" and uses functional language. This limitation requires: (i) the "playback means" performs the recited function of "playing back the stored copy of the received information at a time requested by the user" and (ii) is in the "receiving system." This limitation is indefinite pursuant to § 112, ¶ 2 because the '992 patent fails to disclose any structure for performing the recited function.

1. The Recited Function

Because "playback means" is a means-plus-function limitation, its construction begins with the identification of the recited function. (*See, supra*, Section II.) The recited function of "playback means" is "playing back the stored copy of the received information at a time requested by the user." In accordance with the arguments set forth in Point IV of Round 3 Br. I, the recited function should be construed to mean the following:

> "Playback" and "playing back" is the process of sending signals to a system, such as an audio amplifier and/or television, on which video information can be

> displayed and/or audio information heard. These terms are construed similarly in other claims.
>
> The request by the user to the transmission system "for at least a part of the stored information" must further include a specific time supplied by the user specifying when playback is desired. Systems which only permit users to request "play" for immediate playback do not satisfy this limitation.

2. The "Playback Means" is Located in the Receiving System

The plain meaning of the location clause of this claim element specifies that the "playback means" is in the "receiving system." In other words, the "receiving system" contains the structure that corresponds to the function of "playing back the stored copy of the received information at a time requested by the user." This is supported by the intrinsic evidence. (Round 3 Br. I at Point IV.)

3. The Lack of Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure must be identified. (*See*, *supra*, Section II.) As discussed above, the receiving system must contain the structure that corresponds to the recited function. Accordingly, the proper identification of the corresponding structure requires finding structure in the receiving system that the specification of the '992 patent clearly links to performing the recited function.

The '992 patent, however, does not disclose *any* structure that is capable of "playing back the stored copy of the received information *at a time requested by the user*." (*See* Round 3 Br. I at Point IV.) While Acacia asserts that "data formatter 204, an audio decompressor 209 and/or a video decompressor 208, and converter 206" correspond to the recited function (Acacia Br. at 79), none of these structures, individually or collectively, are clearly linked to performing the *entire* recited function. Far from "playing back the stored copy of the received information *at a time requested by the user*," the structures that Acacia identifies perform a variety of other functions within the "receiving system":

- data formatter 204 "processes compressed formatted data blocks and distinguishes audio information from video information,"
- video decompressor 208 and video decompressor 209 perform the function of decompressing separated audio and video information; and

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- digital video output converter 211, analog video output converter 213, digital audio output converter 212, and analog audio output converter 214 all perform the function of outputting real time output signals.[13]

(Ex. A, '992 patent, 18:23-35.) None of these structures, however, send signals to a system on which video information can be displayed and/or audio information heard *at a specific time supplied by the user* when playback is desired. Instead, Acacia identifies structures that permit only *immediate* playback. This claim limitation is therefore indefinite pursuant to 35 U.S.C. § 112, ¶ 2 because the specification of the '992 patent fails to disclose any structure for performing the recited function.

IV. CLAIM 48

> 48. A distribution system as recited in claim 47, wherein the information in the items includes analog and digital signals, and wherein the [30] **storage means** further comprises:
>
> [36] **conversion means**, for converting the analog signals of the information to digital components;
>
> [37] **formatting means**, coupled to the conversion means, for formatting the digital signals of the information;
>
> [38] **ordering means**, coupled to the formatting means, for ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks and;
>
> [39] **compression means**, coupled to the ordering means, for compressing the ordered information.

Claim 48 depends from claim 47 and further defines the "storage means" limitation of claim 47. As set forth in Section III, a number of limitations of claim 47 are indefinite under 35 U.S.C. § 112, ¶ 2 and thus claim 47 is invalid. Furthermore, as set forth in Section III.A, the "storage means" limitation of claim 47 is indefinite pursuant to 35 U.S.C. § 112, ¶ 2. This lack of structure cannot be cured by including the additional limitations of claim 48 in the "storage means." *See, e.g.*, *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347, 1356 (Fed. Cir. 2005); *Cardiac*

---

[13] The specification does not provide for even a clue as to the structure for converter 206, identified by Acacia as corresponding to the function. The sole reference to converter 206 in specification reads: "The decompressed video data is then sent simultaneously to converter 206 including digital video output converter 211 and analog video output converter 213." ('992 patent, 18:29-32.)

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Pacemakers, 296 F.3d at 1114 (where § 112, ¶ 6 limitation in independent claim was invalid under § 112, ¶ 2 for failure to disclose adequate structure, dependent claims were invalid as well). Additional reasons for the invalidity of claim 48 due to indefiniteness are set forth below.

A. *"Conversion Means" (element [36]) ('992 Patent, Claim 48))*

The first limitation of claim 48 of the '992 patent is:

> conversion means, for converting the analog signals of the information to digital components.

Because the limitation contains the term "means" and uses functional language, the limitation is to be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is indefinite because the claim requires that the "conversion means" be included as part of the "storage means," which is indefinite. *See*, *e.g.*, *Datamize,* 417 F.3d at 1347, 1356; *Cardiac Pacemakers*, 296 F.3d at 1114. Even if the "storage means" were not indefinite (*see, supra,* Section III.A), the specification does not link any structure that can perform the function of the "conversion means" to something that is part of the "storage means."

B. "*Formatting Means" (element [37]) ('992 Patent, Claim 48)*

The next limitation of claim 48 of the '992 patent is:

> formatting means, coupled to the conversion means, for formatting the digital signals of the information.

Because the limitation contains the term "means" and uses functional language, the limitation is to be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is indefinite because the claim requires that the "formatting means" be included as part of the "storage means," which is indefinite. *See*, *e.g.*, *Datamize,* 417 F.3d at 1347, 1356; *Cardiac Pacemakers*, 296 F.3d at 1114. Even if the "storage means" were not indefinite (*see, supra,* Section III.A), the specification does not link any structure that can perform the function of the "formatting means" to something that is part of the "storage means."

C. *"Ordering Means" (element [38]) ('992 Patent, Claim 48)*

The next limitation of claim 48 of the '992 patent is:

> ordering means, coupled to the formatting means, for ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is further indefinite because:

- the claim requires that the "ordering means" be included as part of the "storage means," which is indefinite;
- even if the "storage means" were not indefinite (*see, supra,* Section III.A), the specification does not link any structure that can perform the function of the "ordering means" to something that is part of the "storage means;" and
- the '992 patent fails to disclose adequate structure for the "precompression processor 115," which is part of the structure that corresponds to a portion of the recited function of the limitation.[14]

1. **The Recited Function**

The construction of a means-plus-function limitation begins with the identification of the recited function. (*See, supra*, Section II.) Here, the recited function is "ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks." Acacia asserts that the ordinary meaning of the recited function should apply. [15]

2. **The Lack of Corresponding Structure**

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See, supra*, Section II.) Acacia asserts that the structure corresponding to the function of "ordering the converted analog signals and the formatted digital signals into a sequence of addressable data blocks" is the "time encoder 114." (Acacia Br. at 84:14-17.) The '992 patent, however, provides no structure for "time encoder 114." Therefore ordering means is indefinite

[14] The Court previously construed the "ordering means" in claim 1 of '992 patent that set forth, in part, a different function. Because this is a different claim with a different articulated function, however, this is *not* an argument for reconsideration of that construction.

[15] The Round 3 Defendants note that, pursuant to the Court's *February 24, 2006 Scheduling Order,* they will submit claim construction briefing at a later date requesting reconsideration of the term "sequence of addressable data blocks," which had previously been addressed by the Court in its *July 12, 2004 Markman Order* (i.e., *Markman I*).

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under 35 U.S.C. § 112, ¶ 2. Furthermore, Acacia's proposed structure is overly narrow because it ignores the "precompression processor 115."

During the prosecution of the '992 patent, applicants clearly signaled their intention that the "ordering means" (of claim 1)[16] should also include the "precompression processor 115":

> The requested program is … ordered into a sequence of addressable data block [sic] by the ordering means, for example ***time encoder 114 and precompression processor 115***.

(Ex. C, '992 Prosecution History, 6/17/91 Petition to Make Special at 3-4 (emphasis added).) The clear linking in the prosecution history of the structure to performing the "ordering" function cannot be ignored in favor of litigation-induced arguments to the contrary. *See Med. Instr.*, 344 F.3d at 1210 (citations omitted).

The disclosed 'structure' for the "precompression processor 115" is no more than a black box "processor." "In a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm." *WMS Gaming*, 184 F.3d at 1349. The specification identifies significant amounts of functionality to be performed by this "processor":

- Video aspect ratio conversion (Ex. A, '992 patent, 8:67-68, 9:4-5, 9:9-12);
- Video frame rate conversion (Ex. A, '992 patent, 8:67 – 9:1);
- Audio and video sample rate and word length optimization (Ex. A, '992 patent, 9:4-5, 9:26-35); and
- Placement of a chosen background in inactive regions of the video information (Ex. A, '992 patent, 9:12-22).

The '992 patent fails to disclose any algorithm for performing this extensive list of functionality and, therefore, fails to disclose adequate structure for the "precompression processor 115." *See Gobeli Research*, 384 F. Supp. 2d at 1022-23; *see also Toshiba Corp.*, 2005 U.S. Dist. LEXIS 5213 at *40.

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[16] As noted in note 14, the "ordering means" limitation of claim 1 has a different function, in part, than that of claim 48, however, the arguments made in the prosecution history are equally applicable here, due to certain commonality between the functions.

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For the reasons discussed above, the '992 patent fails to disclose adequate structure for both "structures" – the "time encoder 114" and the "precompression processor 115" – required to perform the recited function of the "ordering means" limitation. It is therefore indefinite. *See Atmel*, 198 F.3d at 1378-79.

D. *"Compression Means" (element [39]) ('992 Patent, Claim 48)*

The next limitation of claim 48 of the '992 patent is:

> compression means, coupled to the ordering means, for compressing the ordered information.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is indefinite because the claim requires that the "compression means" be included as part of the "storage means," which is indefinite. *See*, *e.g.*, *Datamize,* 417 F.3d at 1347, 1356; *Cardiac Pacemakers*, 296 F.3d at 1114.

V. CLAIM 49

> 49. A distribution system as recited in claim 47, wherein the [34] **memory means** includes [40] **means for receiving information at the head end of a cable television reception system.**

Claim 49 depends from claim 47 and further defines the "memory means" limitation of claim 47. As set forth in Section III, a number of limitations of claim 47 are indefinite under 35 U.S.C. § 112, ¶ 2 and thus claim 49 is invalid. This lack of structure cannot be cured by including the additional limitations of claim 49. *See*, *e.g.*, *Datamize,* 417 F.3d at 1347, 1356; *Cardiac Pacemakers*, 296 F.3d at 1114. Furthermore, the '992 patent fails to disclose any structure for "means for receiving information at the head end of a cable television reception system," nor does it make any sense for the memory means to include some sort of cable television head end receiver. Accordingly, this limitation renders claim 49 indefinite pursuant to § 112, ¶ 2.

A. *"Means for Receiving Information" (element [40]) ('992 Patent, Claim 49)*

The limitation contained in claim 49 of the '992 patent is:

> means for receiving information at the head end of a cable television reception system.

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Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is indefinite pursuant to § 112, ¶ 2 because the '992 patent fails to disclose adequate structure for performing the recited function of this limitation.

1. The Recited Function

Because "means for receiving" is a means-plus-function limitation, its construction begins with the identification of the recited function. (*See, supra*, Section II.) The "means for receiving" performs the function of "receiving information at the head end of a cable television reception system." Acacia asserts that the recited function carries its ordinary meaning and that no further construction is required.

2. The "Means for Receiving Information" is Located in the Receiving System

The preamble of the claim makes clear that the "head end of a cable television reception system," is *part of* the "memory means." Because "memory means" is part of the "receiving system" of claim 47, (*see*, *supra*, Section III.E), it logically follows that the "head end of a cable television reception system" must also be part of the "receiving system." The specification of the '992 patent supports this straightforward reading. (Ex. A, '992 patent, 4:37-47 ("Reception system 200' shown in FIG. 1f is a cable television system, as shown in reception systems 200' of FIG. 1e … In the configuration of FIG. 1f, decompression of the requested material may preferably occur at the head end of a cable television reception system 200'.").) Acacia agrees. (Acacia Br. at 87, ll. 18-20 ("The head end of a cable television system is depicted in Figures 1d-1g of the '992 patent. These figures refer to the *head ends as "reception systems"* and assign them reference number 200.") (emphasis added).)

3. The Lack of Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See, supra*, Section II.) Acacia points to the "transceiver 201" as being the corresponding structure for the recited function. While the "transceiver 201" of the "receiving system" (*see* '992 patent, Fig. 6) does receive information, it is the corresponding structure for the

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"receiving means" of claim 47 and its dependents (including this claim). The "transceiver" *cannot* be structure for both (i) the "receiving means" (of independent claim 47) and (ii) the "means for receiving" (of claim 49) in the "memory means." (*See* Markman I at 12 n.7.)

For this reason, the "transceiver 201" cannot be the corresponding structure for the "means for receiving" limitation of claim 49. Because the specification of the '992 patent discloses no structure for performing the recited function in the "memory means," claim 49 is indefinite.

VI. CLAIM 51

> 51. A distribution system as recited in claim 49, wherein [40] **the head end of the cable television reception system** includes [41] **means for distributing compressed signals.**

Claim 51 depends from claim 49, and further defines the "head end of the cable television reception system." As set forth in Sections III and V, a number of limitations of claims 47 and the limitation of 49 are indefinite under 35 U.S.C. § 112, ¶ 2 and thus dependent claim 51 is also invalid. Furthermore, claim 51 fails to disclose any structure for "distributing compressed signals," and thus claim 51 cannot be construed and is therefore invalid.

A. *"Means for Distributing Compressed Signals" (element [41]) ('992 Patent, Claim 51)*

The only limitation of claim 51 of the '992 patent is:

means for distributing compressed signals.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is further invalid as indefinite because the '992 patent fails to disclose any structure for "distributing compressed signals." Claim 51 is indefinite for this reason and because it cannot cure the indefiniteness of the limitations of claims 47 and 49.

1. The Recited Function

Because "means for distributing" is a means-plus-function limitation, its construction begins with the identification of the recited function. (*See, supra*, Section II.) The "means for distributing" performs the function of "distributing compressed signals." Acacia asserts that the recited function carries its ordinary meaning and that no further construction is required.

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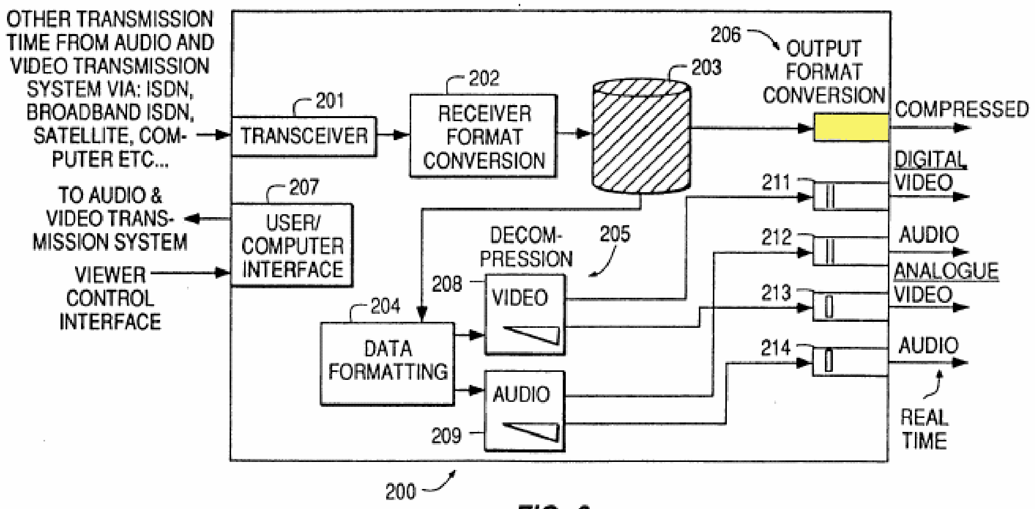
2. The "Means for Distributing Compressed Signals" is Located in the Receiving System

The language of claim 51 makes it clear that the "means for distributing compressed signals" is part of the "head end of the cable television reception system" and, thus, part of the "receiving system." (*See*, *supra*, Section V.) From Acacia's arguments regarding claim 49, it appears that they agree.

3. The Lack of Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See*, *supra*, Section II.) There is no disclosure of structure in the '992 patent for performing the recited function of "distributing *compressed* signals" in the "receiving system" (the head end of a cable reception system). The only possible corresponding structure is the unlabeled box shown in the upper right-hand corner of Fig. 6.



OTHER TRANSMISSION TIME FROM AUDIO AND VIDEO TRANSMISSION SYSTEM VIA: ISDN, BROADBAND ISDN, SATELLITE, COM-PUTER ETC...
TO AUDIO & VIDEO TRANS-MISSION SYSTEM
VIEWER CONTROL INTERFACE
201
TRANSCEIVER
202
RECEIVER FORMAT CONVERSION
203
206
OUTPUT FORMAT CONVERSION
COMPRESSED
207
USER/ COMPUTER INTERFACE
DIGITAL VIDEO
211
AUDIO
212
DECOM-PRESSION
205
208
VIDEO
ANALOGUE VIDEO
213
204
DATA FORMATTING
AUDIO
214
AUDIO
209
REAL TIME
200

FIG. 6

At first glance, this "box" might appear to be part of the output format conversion 206; the specification, however, states otherwise:

> The separated audio and video information are respectively *decompressed* by audio decompressor 209 and video decompressor 208. The *decompressed video data is then sent simultaneously to converter 206* including digital video output converter 211 and analog video output converter 213. The decompressed audio data is sent simultaneously to digital audio output converter 212 and analog audio output converter 214. The outputs from converters 211-214 are produced in real time.

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(Ex. A, '992 patent, 18:27-35 (emphasis added).) The '992 patent *excludes* the "compressed" signals from the "output format conversion 206." There is no other description of any structure for the "distributing compressed signals" functionality that is part of the "reception system 200."

Acacia's assertions that the corresponding structure for "distributing compressed signals" is a "cable television transmitter 122" are unfounded. (*See* Acacia Br. at 88.) Acacia refers to Figs. 1d through 1g as depicting the head end of a cable television reception system. Acacia's broad brush reference to four figures demonstrates that it is overreaching. No "compressed signals" are discussed or shown with respect to Figures 1d – 1f. (*See generally* Ex. A, '992 patent 4:14-51.) While "compressed signals" are discussed in conjunction with Fig. 1g, such figure (and corresponding description) teaches an "airwave communication" system, *not* a "cable television system." (Ex. A, '992 patent, 4:52-63.) For this reason, it cannot serve to determine what the '992 patent discloses as being part of a "cable television reception system."

Acacia apparently agrees that there is no explicit recitation of structure in the intrinsic evidence and therefore argues that "persons of ordinary skill in the art would have understood in 1991 that, by disclosing a cable television system, the patent *implicitly* discloses a cable television transmitter at the head end . . . for distributing signals." (Acacia Br. at 88, ll. 19-22 (emphasis added).) This argument must fail as a matter of law. The *quid pro quo* for being allowed to claim in means-plus-function form is that the patent must adequately disclose and clearly link the corresponding structure. *See B. Braun* at 1424-1425. It is improper, as Acacia does here, to look to the knowledge of one of ordinary skill in the art "apart from and unconnected to the disclosure of the patent." *Med. Instr.*, 344 F.3d at 1211-1212.

Finally, to further support its proposed structure, Acacia includes Figure 2b in its brief. But, Figure 2b is part of the "transmission system," not the "reception system."[17] (*See*, *e.g.*, Ex A., '992 patent 3:28-30 ("FIGS. 2a and 2b are detailed block diagrams of preferred implementations of the transmission system of the present invention"); Ex. A, '992 patent 5:59-61 ("FIGS. 2a and 2b illustrate detailed block diagrams of preferred implementations of the transmission system 100 of the

[17] One exception is that the block labeled "library access interface 121" is described as being part of the reception system. (*See, supra,* Section III.B.3.)

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present invention").) As stated above, since the means of claim 51 is part of the "reception system," any citation to the "transmission system" is irrelevant.

For the foregoing reasons, it is clear that the '992 patent fails to disclose any structure for "distributing compressed signals" and that claim 51 is therefore invalid for indefiniteness under 35 U.S.C. § 112, ¶ 2.

VII. CLAIM 52

> 52. A distribution system as recited in claim 49, wherein the [40] **head end of the cable television reception system** includes [42] **means for decompressing the received signals and for distributing the decompressed received signals and compressed received signals.**

Claim 52 depends from claim 49, and further defines the "head end of the cable television reception system." As set forth in Sections III and V, a number of limitations of claims 47 and the limitation of 49 are indefinite under 35 U.S.C. § 112, ¶ 2 and thus dependent claim 52 is also invalid. Furthermore, the '992 patent fails to disclose any structure for "for distributing the decompressed received signals and compressed received signals." Claim 52 is indefinite for this reason and because it cannot cure the indefiniteness of the limitations of claims 47 and 49.

A. *"Means for Decompressing … and Distributing" (element [42]) ('992 Patent, Claim 52)*

The only limitation of claim 52 of the '992 patent is:

> means for decompressing the received signals and for distributing the decompressed received signals and compressed received signals.

Because the limitation contains the term "means" and uses functional language, the parties agree that the limitation should be construed as a means-plus-function limitation pursuant to 35 U.S.C. § 112, ¶ 6. This limitation is further invalid as indefinite because the '992 patent fails to disclose any structure for "distributing . . . compressed received signals."

1. The Recited Function

The first step is to identify the recited function. (*See, supra*, Section II.) There are two recited functions: (1) "decompressing the received signals"; and (2) "distributing the decompressed received signals and compressed received signals." Acacia asserts that the recited function carries its ordinary meaning and that no further construction is required.

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2. The "Means for Decompressing … and Distributing" is Located in the Receiving System

As claim 52 recites, these functions are performed in the "head end of the cable television reception system." As stated above, claim 49 makes it clear that the "head end of the cable television reception system" is part of the "receiving system." (*See*, *supra*, Section V.)

3. The Lack of Corresponding Structure

Once the recited function has been identified and construed, the corresponding structure can be identified. (*See, supra*, Section III.) For the first recited function of "decompressing the received signals," Acacia states that the corresponding structure is the "video decompressor 208" and the "audio decompressor 209." (Acacia Br. at 90, ll. 20-33; Ex. A, '992 patent, Fig. 6, 18:27-29.)

While that structure supports part of the first function, the analysis is incomplete. The second part of the function requires "distributing the decompressed received signals." The "converter 206," further consisting of "converters 211-214," is the corresponding structure that is clearly linked to the performance of this function:

> The decompressed video data is then sent simultaneously to converter 206 including digital video output converter 211 and analog video output converter 213. The decompressed audio data is sent simultaneously to digital audio output converter 212 and analog audio output converter 214. The outputs from converters 211-214 are produced in real time.

(Ex. A, '992 patent, 18:29-35.) Thus, this structure must be included as a corresponding structure for the first recited function of "decompressing the received signals."

However, as discussed below, because the specification fails to disclose adequate structure for the second recited function of "distributing … compressed received signals," claim 52 is still invalid for failing to comply with the requirements of 35 U.S.C. § 112, ¶ 2.

The second recited function requires "distributing" not only "decompressed received signals," but also "*compressed* received signals." (*See*, *supra*, Section VII.A.1.) Acacia asserts that the "cable television transmitter" is the corresponding structure for the second function.[18] Acacia is

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[18] While Acacia explicitly calls out the "video decompressor 208," "audio decompressor 209" and "cable television transmitter" as the corresponding structure for "decompressing the received signals and for distributing the decompressed received signals and compressed received signals" (Acacia Br. at 90), it recognizes that this proposal is incomplete. In the illustration of

Goodwin Procter LLP
599 Lexington Avenue
New York, NY 10022

incorrect for the same reasons set forth with respect to Claim 51 (*see*, *supra*, Section VI). Acacia's arguments are misplaced and should be rejected.

VIII. CONCLUSION

For the reasons set forth herein, the Round 3 defendants respectfully request that the Court adopt its proposed constructions for the means-plus function limitations.

Figure 6 of the '992 patent, reproduced in Acacia's brief, not only are the "video decompressor 208" and "audio decompressor 209" highlighted, but so are all of the "boxes" under the words "Output Format Conversion." This includes the un-labeled "box" with the "*compressed*" output (discussed with respect to Claim 51, *supra*) and the "converters 211-214," discussed further in the '992 patent as outputting decompressed video/audio in both analog and digital form. (Ex. A, '992 patent, Fig. 6, 18:29-35.)

Goodwin Procter LLP
599 Lexington Avenue
New York, NY 10022

Respectfully submitted,

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GOODWIN | PROCTER LLP

By: /s/ Benjamin Hershkowitz

Benjamin Hershkowitz
John F. Petrsoric
599 Lexington Avenue
New York, NY 10022
Tel.: (212) 813-8800
Fax: (212) 355-3333
bhershkowitz@goodwinprocter.com
jpetrsoric@goodwinprocter.com

John C. Englander
53 State Street
Boston, MA 02109
Tel.: (617) 570-1000
Fax: (617) 523-1231
jenglander@goodwinprocter.com
Attorneys for Defendant
CSC Holdings, Inc.

KAYE SCHOLER LLP

By: /s/ David S. Benyacar

David S. Benyacar
Daniel Reisner
425 Park Avenue
New York, NY 10022-3598
Tel.: (212) 836-8000
Fax: (212) 836-8689
dbenyacar@kayescholer.com
dreisner@kayescholer.com
Attorneys for Defendant
Time Warner Cable, Inc.

LIBNY/4512349